

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: June 28, 2010

Signature: /Brian R. Landry/  
(Brian R. Landry)

Docket No.: 60638CIP2(50370)  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent of:

Dana M. Fowlkes et al.

Patent No.: 7,611,854

Issue Date: November 3, 2009

Application No.: 10/600,003

Confirmation No.: 6034

Filed: June 18, 2003

Art Unit: 1649

For: YEAST CELLS ENGINEERED TO  
PRODUCE PHEROMONE SYSTEM  
PROTEIN SURROGATES, AND USES  
THEREFOR

Examiner: John D. Ulm

**REQUEST FOR CERTIFICATE OF CORRECTION PURSUANT TO 37 C.F.R. § 1.323**

Attention: Certificate of Correction Branch  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir/Madam:

Upon reviewing the above-identified patent, Patentee noted that the Office may have awarded excess Patent Term Adjustment under 35 U.S.C. § 154. Specifically, Patentee respectfully informs the Office that the Patent Term Adjustment of one thousand nine hundred nine (1,909) days printed on the Patent may not be correct. Rather, Patentee calculates the proper award of Patent Term Adjustment as one thousand six hundred forty-two (1,642) days.

**Statement of Facts**

1. Patentee filed the instant application pursuant to 35 U.S.C. § 111(a) on June 18, 2003.

2. The Office mailed a Notice to File Missing Parts of Nonprovisional Application requiring payment of the basic filing fee and a surcharge on November 14, 2003.
3. Patentee filed papers containing an authorization to pay any deficiencies in fees on May 17, 2004.
4. On May 19, 2006, the Office declared an interference between the instant application and U.S. Patent No. 6,406,871.
5. As of June 18, 2006 (*i.e.*, three years after the filing date), a patent had not issued from this patent application.
6. The Board of Patent Appeals and Interferences mailed a Judgment in favor of Patentee on May 3, 2007.
7. The Office mailed a communication on October 6, 2008 objecting to the sequence listing filed with the present application.
8. Patentee filed a Response to Notice Under 37 CFR §§1.821-825 on November 14, 2008.
9. The Office mailed a Notice of Allowance on February 26, 2009.
10. Patentee filed a Request for Continued Examination to obtain consideration of an Information Disclosure Statement on May 20, 2009.
11. The Office mailed a further Notice of Allowance on June 15, 2009.
12. Patentee paid the Issue Fee on September 3, 2009.
13. The instant application issued as U.S. Patent No. 7,611,854 on November 3, 2009.

14. During prosecution, there was a single Request for Continued Examination filed on May 20, 2009 (as discussed in Paragraph 10 herein) and a single interference proceeding spanning from a declaration of interference on May 19, 2006 to a Judgment on May 3, 2007 (as discussed in Paragraphs 4 and 6 herein). Except for that, there was no other request for continued examination, no other interference proceeding, no imposition of a secrecy order, and no review by the Board of Patent Appeals and Interferences or a Federal Court during prosecution. The Patent is not subject to a terminal disclaimer.

15. Patentee submits that there were no circumstances constituting a failure by Patentee to engage in reasonable efforts to conclude processing or examination of the Patent.

The Office May Have Failed to Properly Apply the  
“Double-Counting” Provisions of 35 U.S.C. § 154(b)(2)(A)

16. An inspection of the Patent Term Adjustments page on PAIR, a copy of which is attached hereto as Exhibit A, reveals that the Office accorded one thousand six hundred fifty-three (1653) days of Patent Term Adjustment attributable under 35 U.S.C. § 154(b)(1)(A) (referred to herein as “A Delay”). This calculation is consistent with the one thousand six hundred and fifty-three (1653) days delay between August 19, 2004 (the day after 14 months from the filing date of the instant patent) and February 26, 2009 (the date of mailing of Notice of Allowance under 35 U.S.C. § 151), pursuant to 35 U.S.C. § 154(b)(1)(A)(i) and 37 C.F.R. § 1.702(a)(1).

17. A further inspection of the Patent Term Adjustments page on PAIR (Exhibit A) reveals that the Office also awarded three hundred forty-nine (349) days of Patent Term Adjustment attributable under 35 U.S.C. § 154(b)(1)(C) (referred to herein as “C Delay”). This delay is consistent with the three hundred forty-nine (349) days of delay between the declaration of interference on May 19, 2006 and the Judgment on May 3, 2007.

18. The Office assessed 93 days of applicant delay for failure to timely pay the required fees in response to the Notice of File Missing Parts of Nonprovisional Application.

19. Because the Office's calculation apparently is apparently the sum of the A Delay plus the C Delay and less the 93 days of applicant delay, it appears that the Office may have incorrectly applied the "double-counting" provision of 35 U.S.C. § 154(b)(2)(A).

20. 35 U.S.C. § 154(b)(2)(A) provides:

To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

21. Patentee respectfully informs the Office that Patentee calculates the patent term adjustment for the instant Patent to be one thousand six hundred forty-two (1,642), which is the sum of:

- a. 1653 days of A Delay; plus
- b. 747 days of B Delay; plus
- c. 349 days of C Delay; less
- d. 665 days of overlap between the A Delay and the B Delay; less
- e. 349 days of overlap between the A Delay and the C Delay; and less
- f. 93 days of applicant delay.

The interactions between these intervals are illustrated below as Figure 1.

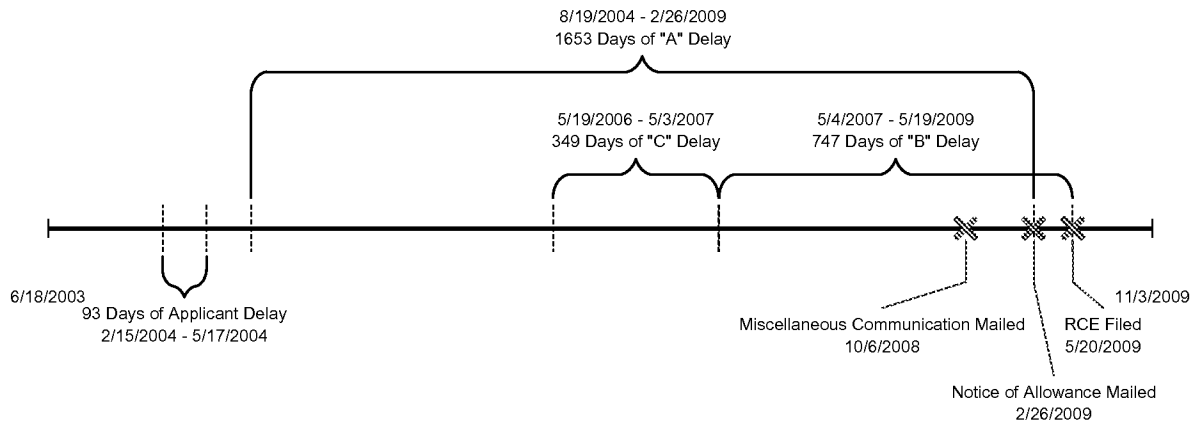


Figure 1

Patentee respectfully requests the Office's review of its calculations. If, after such review, the Office agrees with Patentee's calculation, Patentee respectfully solicits the granting of the proposed Certificate of Correction presented herewith as Exhibit B.

Patentee respectfully submits that the potential errors raised herein are clerical errors, the correction of which does not involve new matter or require reexamination.

Patentee believes that there are no fees due in connection with this Request other than the Certificate of Correction fee under 37 C.F.R. § 1.20(a). However, if any additional fees are due, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 60638CIP2(50370).

Dated: June 28, 2010

Respectfully submitted,

By /Brian R. Landry/  
Peter C. Lauro, Esq.  
Registration No.: 32,360  
Brian R. Landry, Esq.  
Registration No.: 62,074  
EDWARDS ANGELL PALMER & DODGE LLP  
P.O. Box 55874  
Boston, Massachusetts 02205  
(617) 239-0100  
Attorneys/Agents For Applicant

## **EXHIBIT A**

<b>10/600,003</b>	<b>YEAST CELLS ENGINEERED TO PRODUCE PHEROMONE SYSTEM PROTEIN SURROGATES, AND USES THEREFOR</b>	<b>06-03-2010::16:00:49</b>
-------------------	---	-----------------------------

### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/600,003

Filing or 371(c) Date:	06-18-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	11-03-2009	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	1909
USPTO Adjustment(days):	-	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
10-14-2009	PTA 36 Months		
11-03-2009	Patent Issue Date Used in PTA Calculation		
09-29-2009	Dispatch to FDC		
09-11-2009	Application Is Considered Ready for Issue		
09-03-2009	Issue Fee Payment Verified		
09-03-2009	Issue Fee Payment Received		
07-13-2009	Sequence Forwarded to Pubs on Tape		
06-15-2009	Mail Notice of Allowance		
06-13-2009	Document Verification		
06-13-2009	Notice of Allowance Data Verification Completed		
06-13-2009	Case Docketed to Examiner in GAU		
05-20-2009	Information Disclosure Statement considered		
05-20-2009	Reference capture on IDS		
05-20-2009	Information Disclosure Statement (IDS) Filed		
05-22-2009	Date Forwarded to Examiner		
05-20-2009	Request for Continued Examination (RCE)		
05-22-2009	Disposal for a RCE / CPA / R129		
05-20-2009	Information Disclosure Statement (IDS) Filed		
05-20-2009	Workflow - Request for RCE - Begin		
03-16-2009	Sequence Forwarded to Pubs on Tape		
02-26-2009	Mail Notice of Allowance	1653	
02-23-2009	Document Verification	⌘	
02-23-2009	Notice of Allowance Data Verification Completed	⌘	
01-08-2009	Case Docketed to Examiner in GAU	⌘	
01-06-2009	Date Forwarded to Examiner	⌘	
11-14-2008	Response after Non-Final Action	⌘	
11-14-2008	Request for Extension of Time - Granted	⌘	
12-10-2008	CRF Is Good Technically / Entered into Database	⌘	
10-06-2008	Mail Miscellaneous Communication to Applicant	⌘	
09-30-2008	Miscellaneous Action with SSP	⌘	
09-24-2008	Case Docketed to Examiner in GAU	⌘	
03-12-2008	Interference dispatch to TC	⌘	
05-03-2007	Mail Interference Decision - Favorable	⌘	

05-03-2007	Interference Decision on Priority - Favorable	349
05-19-2006	Declaration of Interference	⌘
08-03-2006	Correspondence Address Change	
05-12-2006	Mail Miscellaneous Communication to Applicant	
05-02-2006	Miscellaneous Communication to Applicant - No Action Count	
05-01-2006	Interference Initial Memo Disposal	
06-28-2005	Case Docketed to Examiner in GAU	
03-16-2005	Correspondence Address Change	
03-16-2005	Change in Power of Attorney (May Include Associate POA)	
08-27-2004	IFW TSS Processing by Tech Center Complete	
08-23-2004	Preliminary Amendment	
08-23-2004	Workflow incoming amendment IFW	
07-02-2004	Application Return from OIPE	
07-02-2004	Application Return TO OIPE	
07-02-2004	Application Return from OIPE	
07-02-2004	Application Is Now Complete	
07-02-2004	Application Return TO OIPE	
07-01-2004	Case Docketed to Examiner in GAU	
07-01-2004	Application Dispatched from OIPE	
07-01-2004	Application Is Now Complete	
05-17-2004	Payment of additional filing fee/Preexam	93
06-22-2004	Correspondence Address Change	⌘
06-23-2004	Change in Power of Attorney (May Include Associate POA)	⌘
11-14-2003	Notice Mailed--Application Incomplete--Filing Date Assigned	⌘
10-31-2003	CRF Is Good Technically / Entered into Database	
06-18-2003	CRF Disk Has Been Received by Preexam / Group / PCT	
08-14-2003	Cleared by L&R (LARS)	
08-11-2003	Referred to Level 2 (LARS) by OIPE CSR	
07-15-2003	IFW Scan & PACR Auto Security Review	
06-18-2003	Initial Exam Team nn	

---

[Close Window](#)



## **EXHIBIT B**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
CERTIFICATE OF CORRECTION**

Page 1 of 1

PATENT NO. : 7,611,854  
APPLICATION NO. : 10/600,003  
ISSUE DATE : November 3, 2009  
INVENTOR(S) : Dana M. Fowlkes et al.

It is certified that an error appears or errors appear in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1909 days.

Delete the phrase "by 1909 days" and insert – by 1642 days --.

MAILING ADDRESS OF SENDER (Please do not use customer number below):  
Peter C. Lauro, Esq.  
EDWARDS ANGELL PALMER & DODGE LLP  
P.O. Box 55874  
Boston, Massachusetts 02205